

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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SHARON ELLIS,	:	ECF CASE
	:	
Plaintiff,	:	CASE NUMBER: 08 CIV 4735
	:	
v.	:	(C.M.)
	:	
NEW AGE BOOKS	:	<u>COMPLAINT AND</u>
	:	<u>JURY DEMAND</u>
Defendant.	:	

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Plaintiff Sharon Ellis ("Ms. Ellis"), by her attorneys  
Vitrano & Moschetta LLP, alleges the following:

**NATURE OF THE CASE**

1. This is a civil action for direct, contributory, and vicarious copyright infringement. Ms. Ellis seeks statutory damages under 17 U.S.C. § 504(c)(2), injunctive relief under 17 U.S.C. § 502, and attorney's fees and costs under 17 U.S.C. § 505.

2. Ms. Ellis is the sole author of the work of visual art (the "Work") that was published on the cover of the book *Yoga Anatomy* (the "Authorized Book"), a true and correct copy of which is attached hereto as Exhibit "A."

3. Ms. Ellis is the sole owner of a valid copyright in the Work, a true and correct copy of the record of which is attached hereto as Exhibit "B."

4. Defendant willfully committed direct copyright infringement when it reproduced, published, and distributed the Work on the cover of the book *Anatomy and Physiology of Yogic Practices* (the "Unauthorized Reproduction" and the "Unauthorized Book"), a true and correct copy of which is attached hereto as Exhibit "C," without Ms. Ellis' permission.

5. Defendant willfully committed vicarious copyright infringement when it failed - through its right and ability to supervise the individuals who created the Unauthorized Reproduction and produced and distributed the Unauthorized Book - to prevent the infringement while maintaining a financial interest in the infringing activities.

6. Defendant willfully committed vicarious copyright infringement when it knowingly provided the individuals who created the Unauthorized Reproduction and produced and distributed the Unauthorized Book with the means, materials and opportunity to carry out the acts constituting copyright infringement.

#### **JURISDICTION AND VENUE**

7. This action arises under 17 U.S.C. § 101, et seq. (1976), otherwise known as the Copyright Act of 1976.

8. This Court has original jurisdiction over Ms. Ellis' copyright infringement claims according to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has long-arm personal jurisdiction over Defendant pursuant to New York CPLR § 302, because Defendant a) regularly supplies goods in New York and b) violated Ms. Ellis' exclusive right under 17 U.S.C. § 106(3) to distribute copies of her Work in New York.

10. This Court is the proper venue under 28 U.S.C. § 1391 (b)(2) because Defendant's distribution of the Unauthorized Book and the Unauthorized Reproduction in New York State and this district constitute a substantial part of the events giving rise to the claims set forth herein.

11. Defendant distributes and offers for sale the Unauthorized Book and the Unauthorized Reproduction in book stores in New York, New York.

12. This Court is the proper venue under 28 U.S.C. § 1391 (b)(3) and 28 U.S.C. § 1400 because Defendant "may be found" in New York State and in this district pursuant to the personal jurisdiction requirements of New York CPLR § 302.

#### **STANDING**

13. Ms. Ellis holds a valid, federally-issued Certificate of Registration for her copyright in the Work at issue and,

therefore, has standing to institute this action for infringement pursuant to 17 U.S.C. § 411.

**STATUTE OF LIMITATIONS**

14. Ms. Ellis brings this action within the three-year time limit set forth in 17 U.S.C. § 507(b).

15. Defendant's infringement commenced on or about January 2008 when Defendant produced the Unauthorized Book and published the Unauthorized Reproduction on the cover of the Unauthorized Book.

16. Ms. Ellis discovered the infringement in March 2008 when she discovered the Unauthorized Book for sale on [indiaclub.com](http://indiaclub.com), an Internet book reseller. Therefore, this claim accrued in March 2008, well within the statute of limitations.

**PLAINTIFF**

17. Plaintiff Sharon Ellis is a sixty-five-year-old professional medical illustrator. She has worked as a professional medical illustrator for approximately thirty-eight (38) years. She holds a Bachelors of Science degree in fine art and science from the University of Texas, a Masters of Arts degree in medical art from the University of Texas Southwestern Medical School, and a Master's of Arts degree from the State University of New York at Albany. Ms. Ellis served as an Assistant Professor in the Department of Medical Art at Albany Medical College in Albany, New York for three (3) years. Her

medical illustration has been published in numerous publications on medical topics.

18. Ms. Ellis operates under the trade name, "Medical Art Studio" and maintains a website at [www.medicalartstudio.com](http://www.medicalartstudio.com).

19. Ms. Ellis resides at 225 East 11<sup>th</sup> Street, #6 New York, NY 10003.

#### **DEFENDANT**

20. Defendant New Age Books is an India-based company that distributes books in the United States through its website, [www.newagebooksindia.com](http://www.newagebooksindia.com), and book stores located in the United States. Its principal place of residence is A-44 Naraina Industrial Area, Phase-I, New Delhi 110 028 (India).

#### **RELATED PARTIES**

21. Dr. Makarand Madhukar Gore is the author of the text of the Unauthorized Book.

22. Mr. Leslie Kaminoff is the author of the text of the Authorized Book.

#### **FACTUAL ALLEGATIONS**

##### **The Work and the Authorized Book**

23. On or about May 6, 2005, Ms. Ellis entered into a written agreement with Human Kinetics ("HK" and the "HK Agreement"), an Illinois-based publisher, to create two hundred-eighty (280) illustrations (including the Work at issue) of the human body (including bone and musculature depictions) in

various anatomical positions illustrating the practice of yoga and its effects on the human body for publication in the Authorized Book, *Yoga Anatomy*.

24. According to the HK Agreement, HK agreed pay Ms. Ellis seventy thousand dollars (\$70,000.00) for the illustrations.

25. According to the HK Agreement, Ms. Ellis retained her ownership of the copyrights to each of the illustrations including the Work at issue.

26. Ms. Ellis completed the illustrations in early 2007.

27. On or about June 20, 2007, HK published the Authorized Book including Ms. Ellis' illustrations and the Work at issue.

28. In its publication of the Authorized Book, HK published the Work at issue on the cover of the book, a true and correct copy of which is attached hereto as Exhibit "A."

29. The Authorized Book is a top-selling book, ranking number one on the list of books selling in the category of yoga fitness on Amazon.com, a popular Internet book retailer.

**The Unauthorized Reproduction and the Unauthorized Book**

30. In 2008, Defendant published *Anatomy and Physiology of Yogic Practices* (the "Unauthorized Book"), a book that also addresses the anatomical aspects of yoga practice.

31. Defendant reproduced Ms. Ellis' Work on the cover of the Unauthorized Book, a true and correct copy of which is attached hereto as Exhibit "C," without Ms. Ellis permission.

32. Ms. Ellis did not authorize Defendant to reproduce or distribute her Work in any manner.

33. Defendant did not credit Ms. Ellis in any way with authorship of the Unauthorized Reproduction.

**Ms. Ellis' Valid Copyrights in the Work**

34. Ms. Ellis is the sole author of the Work.

35. Ms. Ellis' Work is entirely original. Indeed, she created the Work independently and did not borrow any portion of any other original works to create it.

36. On May 3, 2007, the Copyright Office issued to Ms. Ellis copyright registration number VAu-0-748-324, a true and correct copy of the record of which is attached hereto as Exhibit "B," representing her ownership of the copyrights to the illustrations including the Work appearing on the cover of the Authorized and the Unauthorized Books.

37. Ms. Ellis' copyright registration was secured in compliance with the requirements of the Copyright Act and the Copyright Office's procedural guidelines.

38. Ms. Ellis has never transferred, abandoned, or otherwise divested herself of her interest in the registration or her rights to the Work under copyright.

39. Ms. Ellis obtained the copyright registration within five (5) years of the Work's first publication. Therefore, pursuant to 17 U.S.C. § 410(C), Ms. Ellis' copyright

registration constitutes prima facie evidence of the validity of her copyrights.

**Defendant's Infringement Was Willful**

40. Defendant's infringement of Ms. Ellis' copyrights was - and continues to be - willful.

41. When Defendant published the Unauthorized Book, it did so with full access to the Authorized Book published by HK.

42. The Unauthorized Reproduction is an exact reproduction of the Work.

43. Defendant's failure to contact HK, Leslie Kaminoff, or Ms. Ellis for permission to reproduce and distribute the Work demonstrates Defendant's reckless disregard to the possibility that it was infringing another's copyrights.

44. Defendant's access to Ms. Ellis' Work as it appeared on the cover of the Authorized Book demonstrates Defendant's reckless disregard and indifference to Ms. Ellis' copyrights.

45. Defendant's willfulness entitles Ms. Ellis to statutory damages under 17 U.S.C. § 504(c)(2).

**Defendant Continues to Infringe**

46. Defendant continues to publish and distribute to the Unauthorized Reproduction and the Unauthorized Book. Therefore, as of the filing of this Complaint, Defendant continues to infringe Plaintiff's Work.



47. Defendant's conduct has caused and, unless enjoined by this Court, threatens to cause substantial and irreparable injury to the value of Plaintiff's copyrights in the Work.

### **CLAIMS**

#### **Claim 1 - Direct Copyright Infringement**

48. Plaintiff repeats and realleges Paragraphs 1 through 47 above.

49. Plaintiff's copyright registration described herein is valid and enforceable.

50. Ms. Ellis is entitled to all the benefits arising from such valid copyright registration under the Copyright Act.

51. The acts of Defendant described herein constitute Defendant's infringement of Plaintiff's exclusive rights under 17 U.S.C. § 106.

52. According to the traditional agency doctrine of respondeat superior, Defendant's employment or engagement of the individuals who designed and produced the Unauthorized Book renders Defendant liable for direct copyright infringement.

53. Pursuant to 17 U.S.C. § 201(b), the Unauthorized Reproduction is Defendant's "work made for hire."

54. Defendant's unauthorized reproduction of the Work as a "work made for hire" renders Defendant liable for direct copyright infringement under 17 U.S.C. § 501.

55. Defendant's conduct is an infringement of Ms. Ellis' exclusive rights under 17 U.S.C. §§ 106 (1), (2), and (3).

56. Defendant infringed three (3) of Ms. Ellis' exclusive rights under 17 U.S.C. § 106(1), (2) and (3) when it reproduced Ms. Ellis' Work, created derivative copies of the Work, and distributed the Work.

57. Defendant committed the foregoing acts of infringement with willfulness, indifference, and reckless disregard for Plaintiff's exclusive rights under 17 U.S.C. § 106.

**Claim 2 - Contributory Copyright Infringement**

58. Plaintiff repeats and realleges Paragraphs 1 through 57 above.

59. Defendant willfully committed contributory copyright infringement.

60. Defendant knowingly induced, caused, or materially contributed to other individuals' infringing conduct when it provided individuals with the means, materials, and opportunity to carry out the acts constituting copyright infringement.

61. Defendant knowingly induced, caused, or materially contributed to other individuals' infringing conduct by way of its role as editor and publisher of the Unauthorized Book.

62. The means that Defendant provided to other individuals to carry out the acts constituting copyright infringement include the work assignment or the opportunity to design the

cover of the Unauthorized Book, and other standard procedures by which defendant carried out its role as editor and publisher.

63. The materials that Defendant provided to other individuals to carry out the acts constituting copyright infringement include the printing facilities used to publish the Unauthorized Book and other standard procedures and materials by which defendant carried out its role as editor and publisher.

64. The opportunity, or forum, that Defendant provided to other individuals to carry out the acts constituting copyright infringement include the work assignment or opportunity, the contract or right to design the cover of the Unauthorized Book, and other standard processes by which defendant carried out its role as editor and publisher.

**Claim 3 - Vicarious Copyright Infringement**

65. Plaintiff repeats and realleges Paragraphs 1 through 64 above.

66. Defendant is liable for vicarious copyright infringement, because it controlled the individuals who designed and produced the Unauthorized Book and financially benefited from their infringing conduct.

67. Defendant controlled the individuals who carried out the design, reproduction and distribution of the Unauthorized Book by way of its role as employer, editor or publisher.

68. Defendant stood to benefit financially from the individuals who designed and produced the Unauthorized Book by way of its role as editor and publisher because it received a portion of the purchase price of the Unauthorized Book. Defendant also stood to benefit financially from these individuals' infringing conduct because it did not have to render payment to Ms. Ellis for her permission to use the Work.

69. Defendant willfully committed vicarious copyright infringement when it failed - through its right and ability to supervise the individuals who designed and produced the Unauthorized Book - to prevent the infringement while maintaining a financial interest in the infringing activities.

70. Defendant's failure to properly supervise the individuals who designed, produced and distributed the Unauthorized Book is evident by its failure to prevent the publication of the Unauthorized Reproduction.

71. By receiving money from the sale of the Unauthorized Book, Defendant had a financial interest in the infringing activities.

**PRAYER FOR RELIEF**

WHEREFOR, Plaintiff respectfully requests that this Court enter final judgments against Defendant as follows:

1. An Order declaring Defendant liable for copyright infringement in violation of 17 U.S.C. § 101, et Seq.;

2. Statutory damages in lieu of actual damages and profits pursuant to 17 U.S.C. § 504(c) in an amount of not less than \$150,000, or for such other amount as may be proper pursuant to 17 U.S.C. § 504(c);

4. An injunction according to 17 U.S.C. § 502 permanently enjoining Defendant from, directly or indirectly infringing, or from causing, contributing to, enabling, facilitating, or participating in the infringement of, any of Plaintiff's respective copyrights or exclusive rights under copyright (whether now in existence or hereafter created), including without limitation, the copyrighted Work shown in Exhibit "A."

5. For Plaintiff's attorney's fees and costs in this action pursuant to 17 U.S.C. § 505.

**JURY DEMAND**

Plaintiff demands a jury trial as to all issues so triable.

Respectfully submitted,

By: s/ANDREW VITRANO  
Andrew Vitrano (AV 9491)

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DATED: May 20, 2008

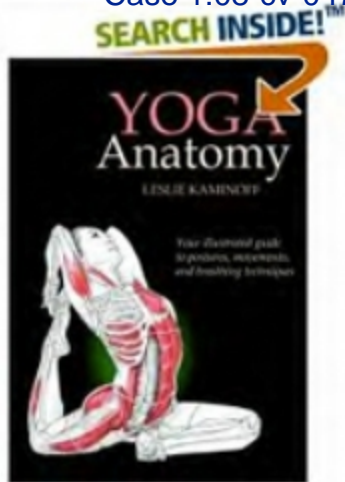
SHARON ELLIS v. NEW AGE BOOKS

CASE NUMBER: 08 CIV 4735

EXHIBITS TO PLAINTIFF'S COMPLAINT, DATED: May 20, 2008

**EXHIBIT A**

**The Work as Published on the Cover of the Authorized Book**



## Yoga Anatomy (Paperback)

by [Leslie Kaminoff](#) (Author), [Amy Matthews](#) (Collaborator), [Sharon Ellis](#) (Illustrator)

**Key Phrases:** [glenohumeral joint external rotation](#), [scapula downward rotation](#), [tor externus](#), [Joint Actions Spine](#), [Working Spine](#), [Lengthening Spine](#) ([more...](#))

★★★★★ ☒ ([34 customer reviews](#))

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SHARON ELLIS v. NEW AGE BOOKS

CASE NUMBER: 08 CIV 4735

EXHIBITS TO PLAINTIFF'S COMPLAINT, DATED: May 20, 2008

**EXHIBIT B**

**Ms. Ellis' U.S. Copyright Registration No. VAu-0-748-324**



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## Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Title = yoga anatomy

Search Results: Displaying 1 of 2 entries



Labeled View

***Yoga anatomy.***

**Type of Work:** Visual Material

**Registration Number / Date:** VAu000748324 / 2007-05-03

**Title:** Yoga anatomy.

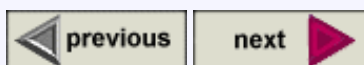
**Description:** Art original.

**Copyright Claimant:** Sharon L. Ellis, 1943-

**Date of Creation:** 2007

**Copyright Note:** Cataloged from appl. only.

**Names:** [Ellis, Sharon L., 1943-](#)



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SHARON ELLIS v. NEW AGE BOOKS

CASE NUMBER: 08 CIV 4735

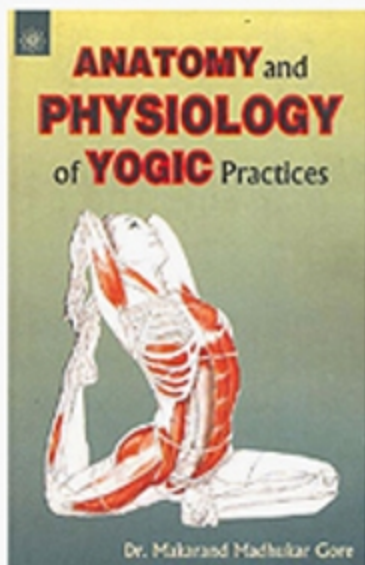
EXHIBITS TO PLAINTIFF'S COMPLAINT, DATED: May 20, 2008

**EXHIBIT C**

**Defendant's Unauthorized Reproduction of Ms. Ellis' Work**

# Anatomy and Physiology of Yogic Practices

by [Makarand Madhukar Gore](#) ([Author ALERT](#))



**Our Price: \$16.95 USD**

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**Availability:**

**Usually Delivers in 10 - 15 Business Days**

**ProductID: 23502** - Paperback - 223 Pages (Year: 2008)  
New Age Books ~ ISBN: 9788178223056

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► **Indiaclub.com Description**

The first part of the book deals with only that part of the basic anatomy and physiology understanding the mechanism of yoga practices. This time a special note, in the form of a 'view', has been added so as to understand various concepts and aphorisms of yoga.